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Director's Office

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**LEE KOVAR**

Facility ID #63373 - Iowa County

ADMINISTRATIVE CONSENT  
ORDER

NO. 2012-AFO- 10

TO: Lee Kovar  
1952 D Avenue  
Victor, Iowa 52347

**I. SUMMARY**

This administrative consent order is entered into between Lee Kovar and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding animal feeding operation violations at Mr. Kovar's animal feeding operation located 1701 G Avenue, Ladora, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bert Noll, DNR Field Office #6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, Iowa 52353-1623  
Phone: 319/653-2135

**Relating to appeal rights:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director, Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459, Subchapter III, and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. On July 6, 2011, Bert Noll, DNR Field Office 6 environmental specialist, was investigating an open lot stockpiling complaint at Lee Kovar's animal feeding operation located at 1701 G Avenue, Ladora, Iowa. During the investigation, Mr. Noll observed two large cattle buildings that appeared to be confinement buildings. Stan Kovar, Lee Kovar's son, informed Mr. Noll that a manure management plan (MMP) had been submitted for the site.

2. Upon further review of the DNR's records, a MMP was not found for Mr. Kovar's facility. On July 7, 2011, Mr. Kovar was sent a letter requesting information regarding the buildings. On July 26, 2011, Mr. Kovar submitted information regarding the buildings. The letter stated that one of the buildings was constructed in 2009, with a capacity of 450 of cattle and the other building was constructed in March 2011, with a capacity of 400 head of cattle.

3. On August 12, 2011, Jim Sievers, DNR Field Office 6 environmental specialist senior, and Mr. Noll returned to Mr. Kovar's facility and met with him to discuss the site in detail.

4. On August 23, 2011, a Notice of Violation letter was issued to Mr. Kovar for failing to have a MMP for his facility. The Notice of Violation letter informed Mr. Kovar the matter was being referred for further enforcement. Mr. Kovar was also required to submit the MMP and appropriate fees. The MMP and fees have since been submitted.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 459.312(1)"a"(1) and 567 IAC 65.16(1)"b" require that the owner of a confinement feeding operation constructed or expanded after May 31, 1985, other than a small feeding operation, shall submit a MMP to the DNR. Iowa Code section 459.102(47) defines a "small animal feeding operation" as an operation with an animal unit capacity of five hundred or fewer animal units. This requirement became effective May 12, 1999. Mr. Kovar's facility was constructed in 2009 and 2011 and has an animal unit capacity of 850 animal units. Mr. Kovar failed to submit a MMP in March 2001 when the facility exceeded 500 animal units. The above facts indicate a violation of this provision.

3. 567 IAC 65.17(1)"d" requires that a person who submits an MMP shall include a phosphorus index with the MMP. The above facts indicate a violation of this provision.

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4. Iowa Code section 459.503 and 567 IAC 65.16(6) require all persons required to submit a MMP to also submit an indemnity fee. The indemnity fee is ten cents per animal unit. Mr. Kovar's indemnity fee is \$85.00. The indemnity fee was due when the MMP should have been filed. To date the indemnity fee has not been paid.

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5. 567 IAC 65.16(7) requires any person submitting an original MMP to also pay to the DNR a MMP filing fee of \$250.00. The filing fee is required to be submitted with the MMP.

**V. ORDER**

THEREFORE, the DNR orders and Lee Kovar agrees to do the following:

1. Lee Kovar shall pay a penalty of \$2,500.00 in accordance with the following payment plan. If any of the penalty payments are missed, the remaining penalty shall be due immediately.

\$108.00 due March 15, 2012;	\$104.00 due March 15, 2013;
\$104.00 due April 15, 2012;	\$104.00 due April 15, 2013;
\$104.00 due May 15, 2012;	\$104.00 due May 15, 2013;
\$104.00 due June 15, 2012;	\$104.00 due June 15, 2013;
\$104.00 due July 15, 2012;	\$104.00 due July 15, 2013;
\$104.00 due August 15, 2012;	\$104.00 due August 15, 2013;
\$104.00 due September 15, 2012;	\$104.00 due September 15, 2013;
\$104.00 due October 15, 2012;	\$104.00 due October 15, 2013;
\$104.00 due November 15, 2012;	\$104.00 due November 15, 2013;
\$104.00 due December 15, 2012;	\$104.00 due December 15, 2013;
\$104.00 due January 15, 2013;	\$104.00 due January 15, 2014;
\$104.00 due February 15, 2013;	\$104.00 due February 15, 2014;

**VI. PENALTY**

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an

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administrative penalty of \$2,500.00. The administrative penalty is determined as follows:

Economic Benefit – Mr. Kovar's failure to comply with the animal feeding operation regulations has allowed him to achieve an economic benefit. Mr. Kovar has achieved an economic benefit by delaying the payment of the filing fee, indemnity fee and preparation costs for the MMP. Mr. Kovar gained an economic benefit over producers who have timely filed MMPs. The economic benefit received by Mr. Kovar is estimated to be \$100.00.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Mr. Kovar's failure to obtain a MMP threatens the integrity of the animal feeding operation program. The MMP is a crucial aspect of the DNR's animal feeding operation program. The MMP ensures that an animal feeding operation has adequate production land available so that the manure can be properly applied to crop land at an agronomic rate in order to prevent over application of manure. Mr. Kovar's operation is a large operation to be operating without the required MMP. Mr. Kovar's operation has 700 animal units and if the manure is not contained or applied properly it could cause environmental harm. Based on the above considerations, \$1,400.00 is assessed for this factor.

Culpability - All animal feeding operation owners and operators have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that the operation is subject to DNR's rules. The animal feeding operations area of agriculture is a rapidly growing and changing area of agriculture. Animal feeding operation owners and operators have an obligation to be aware of the regulations that apply to the operation of the facility. Additionally, the MMP requirements have been in place since 1999. Based on the above considerations, \$1,000.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Lee Kovar. For that reason, Lee Kovar waives the right to appeal this administrative consent order or any part thereof.

## VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an

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administrative order or referral to the Attorney General to obtain injunctive relief  
and civil penalties pursuant to Iowa Code section 455B.191.

  
\_\_\_\_\_  
LEE KOVAR

Dated this 10 day of  
MARCH, 2012.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 27<sup>th</sup> day of  
March, 2012.

#63373; Field Office 6; Kelli Book; Gene Tinker; VIII C.1